

Appl. No. 10/633,970
Atty. Docket No. 9153R
Response Dated: September 17, 2004
Reply to Office Action of March 17, 2004
Customer No. 27752

REMARKS

Claims 1-59 are pending in the present invention. No additional claims fee is believed to be due.

Response to Claim Objections

The Office Action states that claims 30 and 54 are objected to because the term "phosphoric acid" is listed twice. Applicant respectfully submits that the error is actually in claim 33 and claim 57. Applicant has herein amended claims 33 and 57 to delete the extra term "phosphoric acid" from each of the claims.

Rejection Under 35 USC § 101

The Office Action states that claims 1-59 are provisionally rejected based on copending Application Serial No. 10/369,039. Applicant has expressly abandoned Application Serial No. 10/369,039 in favor of the present application. Applicant thus respectfully traverses the rejection under 35 USC § 101 as now being moot.

Rejection Under 35 USC § 103

The Office Action states that claims 1-59 are rejected under 35 USC § 103 as being unpatentable over Nakamura et al (US Patent No. 6,045,847) in view of Marlett et al (US Patent No. 6,287,609) or Colliopoulos (US Patent No. 5,009,916). Applicants respectfully traverse this rejection and assert that there is no teaching, motivation, or suggestion to combine the cited references in view of the current invention. Indeed, Applicants respectfully assert that the Examiner has failed to present a *prima facie* case of obviousness in view of the lack of such teaching, motivation, or suggestion to combine these references.

Indeed, "the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggest the desirability of the combination." See MPEP 2143.01 and also *In Re Mills*, 916 F.2d 680 (Fed. Cir. 1990); "there must be a suggestion or motivation in the reference to do so." *Id.* For at least the following reasons, the combination proposed by the Examiner has failed to meet these requisite tests.

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The Office Action states that Nakamura et al, US Patent No. 6,045,847, shows that compositions comprising xylose and arabinose are well known in the art. Nakamura relates to a rice cooking method wherein a water-soluble hemicellulose is added to rice for improved soaking of rice and for consistency of texture. A person of ordinary skill in the art of compositions related to fiber laxatives and fiber supplements would not be motivated to consider the water soluble hemicellulose described in Nakamura. In addition, Nakamura does not teach any desirable ratio of xylose to arabinose. Nakamura further does not teach polysaccharide particle size distributions as recited in the present invention. Rather the Examiner has merely concluded in the Office Action that a composition comprising xylose and arabinose obviates the use of any composition comprising xylose and arabinose. Applicant submits that the use of a hemicellulose as a source of xylose and arabinose does not obviate the compositions claimed in accordance with the current invention.

In addition, there would have been no motivation for persons of ordinary skill in the art to combine the disclosure relating to a water-soluble hemicellulose in Nakamura to compositions containing xylose and arabinose, as discussed in Marlett and the teachings of Colliopoulos, related to psyllium husk in a high fiber bar. In particular, given the benefits of the polysaccharide fractions described in Marlett, it would not have been expected that the artisan would successfully substitute components described in Nakamura or Colliopoulos with components described in Marlett, since Marlett teaches the removal of those components which contribute to the unpleasant or unsafe qualities of the husk; these components are all necessarily present in the compositions of Nakamura and Colliopoulos. It would therefore, not have been obvious for a person of ordinary skill in the art to combine the cited references.

In addition, the Office Action states that claims 1, 15, 16, 19, 27, 28, 32,33, 35, 43,44, 52 and 56-59 are rejected under 35 USC §103(a) over Nakamura et al and Marlett et al further in view of Barbera (US Patent No. 5,425,945). As discussed above, there is no motivation to combine the Nakamura and Marlett references. There is further no motivation to combine the teachings of Barbera with that of Nakamura and Marlett. The particle size range disclosed in Barbera relates to psyllium husk. Applicant submits again that there is a demotivation of the ordinarily skilled artisan to rely on literature relating to psyllium husk for the successful optimization of xylose and arabinose

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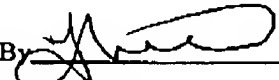
polysaccharide fractions based on the inherent problems that have been found with psyllium husk in the past. If a substitution were made as discussed above, the inherent problems that exist with psyllium husk would remain. Applicants respectfully traverse the 35 USC § 103 rejection.

CONCLUSION

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 USC § 101 and 35 USC § 103. Early and favorable action in this case is respectfully requested.

Applicants have made an earnest effort to place their application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, Applicants respectfully request reconsideration of this application, and allowance of Claims 1-59.

Respectfully submitted,
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